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WTO agreements and quality concerns in Indian Fisheries

P. Vijayagopal* and T. V. Shankar
Senior Scientist
Marine Biotechnology Division
CMFRI , Kochi
*Email: vgcochin@hotmail.com

Introduction

WTO agreements are legal ground rules of international commerce. As several facets of WTO agreements are discussed in this short course this paper will be a snapshot of Sanitary and Phytosanitary Agreement popularly known as SPSA which is a non-tariff barrier in international trade. The Agreement on the Application of Sanitary and Phytosanitary measures sets out the basic rules for food safety and animal and plant health standards. Safe and hygienic food is preferred anywhere in the world. More so in the northern world where advances in science have increased the level of awareness regarding the health ailments caused due to consumption of unsafe food. This has lead to development of food safety standards in these countries. Not only do these countries adopt these standards but also expect other countries to follow them giving rise to a plethora of issues. The general nature of such food standards can be said to be (1) a growing use of risk analysis (2) treatment of public health as a primary goal of food safety regulations (3) emphasis on a farm-to-fork approach in addressing food safety hazards (3) adoption of HACCP for microbial quality control (4) emergence of newer and extensive regulations to handle newly identified hazards.

For the purposes of the SPS Agreement, sanitary and phytosanitary measures are defined as any measures applied:

- to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food;
- to protect human life from plant- or animal-carried diseases;
- to protect animal or plant life from pests, diseases, or disease-causing organisms;
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.

These include sanitary and phytosanitary measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora.
The problem can visualized as two sides of a coin. Ensuring food safety is one side which is done with standards and regulations. The other side is using the same standards and regulations to prevent import and export to protect vested interests like restricting a slump in prices of domestic production by banning imports saying that the imports are tainted using food safety standards.
Since the entire mechanism is self regulated, standards can be set based on science. Adopting international standards and certifications are also encouraged. Higher standards

can be set based on risk assessments. In short all these should be done with consistency and arbitrariness invites problems.

Features of SPS

Protection or protectionism?

Trade restrictions are necessary for food safety in any country. Governments ensure unsafe food is not produced within the country, imported or exported. The spirit being this, there is a tendency to misuse this by using it as a barrier to protect domestic production. Even if safe food is available elsewhere at a cheaper cost its import is curbed using technicalities in the SPS. Thus as WTO itself put it 'A sanitary or phytosanitary restriction which is not actually required for health reasons can be a very effective protectionist device, and because of its technical complexity, a particularly deceptive and difficult barrier to challenge.'

Justification of measures

The justification given for application of SPS is that, to ensure food safety these measures should be used consistently and constantly avoiding any arbitrariness. As these measures involve application of science it will have clear objectives which are assessed based on scientific data.

International standards

WTO is not directly involved in the development of standards. It only encourages the member countries to adopt standards developed by international bodies. However, WTO countries have the freedom to refuse adoption with proper scientific justification.

Adapting to conditions

Due to geographical differences sanitary and phytosanitary conditions cannot be applied uniformly. Recognizing this fact WTO allows agreements cutting across political boundaries. The agreement, however, checks unjustified discrimination in the use of sanitary and phytosanitary measures, whether in favour of domestic producers or among foreign suppliers.

Risk assessment

In order to make the SPS transparent, risk assessment procedures for every safety measure is encouraged. Factors taken into consideration for making a particular risk assessment also has to be revealed. . Although many governments already use risk assessment in their management of food safety and animal and plant health, the SPS Agreement encourages the wider use of systematic risk assessment among all WTO member governments and for all relevant products.

Transparency

All changes in the sanitary and phytosanitary conditions which affect trade should be notified by the member countries. Governments are requested to set up enquiry points or offices for clarifications or to respond to requests for more information. All changes should be open to scrutiny. A special Committee has been established within the WTO as a forum

for the exchange of information among member governments on all aspects related to the implementation of the SPS Agreement. The SPS Committee reviews compliance with the agreement, discusses matters with potential trade impacts, and maintains close co-operation with the appropriate technical organizations. In a trade dispute regarding a sanitary or phytosanitary measure, the normal WTO dispute settlement procedures are used, and advice from appropriate scientific experts can be sought.

Table 22.1 Classification of SPS measures:

Import Bans		Technical Specifications			Information Requirements	
Total Ban	Partial Ban	Process Standards	Product Standards	Packaging Standards	Labeling Requirements	Controls on Voluntary Claims

Source: Roberts et al. (1999)

As shown above there are three broad categories. In case of bans, it can be partial or total. These are imposed on categories of goods which will directly impact human health. Partial ban can be based on particular varieties or grades, supplies from particular countries/regions and/or imports at particular times of the year. In this case there are no alternatives and technical controls are not feasible. Eg. Tainted milk from China and detergents with mercury.

Secondly, technical specifications define requirements that products must satisfy in order to be permitted entry. These can encompass the characteristics of the product itself, the process by which it is produced and the manner in which it is packaged. Predefined methods of conformity assessment are specified to determine whether the product is in compliance and can be permitted to enter. Examples, include maximum bacterial counts for milk and dairy products, use of hazard analysis critical control point (HACCP) in the processing of meat or fish, maximum residue levels (MRLs) for pesticides in fresh fruit and vegetables, and restrictions on the types of material that can be used when packaging comes in direct contact with the food product.

Thirdly, information measures require certain information to be disclosed on the product label and/or control the claims that can be made about the characteristics of the product. These are most commonly applied when the risk is relatively low, can be controlled easily through the actions of the consumer, or the risk is confined to a sub-set of the population (for example in the case of allergies). Examples include instructions on how a product should be stored and prepared.

Issues in seafood trade – implications of WTO-GATS

The implications of WTO-GATS on are multidimensional. Complex negotiations take place in terms of level of tariffs and subsidies. Bilateral and regional negotiations take place with European Union (EU) in formulation of Economic Partnership Agreements (EPAs) and Fisheries Partnership Agreements (FPAs). Therefore these issues are discussed under tariff measures non-tariff measures and subsidies.

Tariff measures

In general, tariffs on export of fishery product were high in developed countries before the Uruguay round of negotiations. This was reduced to 4.5 per cent in developed countries which were as high as 60 per cent. It should be noted that 4.5 per cent is a general figure and there are `tariff peaks' for value added products. Developed countries maintain a

tariff escalation for processed fish when compared to import of unprocessed fish and chilled fish. However, the main barrier still remains to be the import duties on fishery products. Tariff exemptions by developed countries are an important action in the international trade of fish. In general it is 10 per cent, but 0 per cent apply for Asia, Caribbean and Pacific (APC) and Least Developed Countries (LDC).

EU is India's largest trading partner in sea food which has the highest tariff of 10.2 per cent. Interestingly China has a bound tariff rate of 18 per cent. The biggest seafood market for India is Japan which has a tariff of 4.1 per cent. US are the next biggest market with a tariff of only 1 per cent. The EU, Japan and the US extend preferential tariff treatment under Generalized System of Preferences (GSP) to Indian products including seafood. In general, tariff measures are not seen as a trade barrier by the Indian seafood industry to the US and Japanese markets. However, it is seen as a barrier to access some of the markets in developing countries, including China, as well as the EU market. India is still in List 1 of Annexure 1 of the EC Decision 97/276/EC, amended by 99/136/EC, whereby all organizations exporting seafood to the EU require export-worthy certification of their processing facilities by an EU-nominated inspection agency. In the case of India, that agency is the Indian Export Inspection Council (EIC).

Non tariff measures

SPS and Technical barriers to Trade (TBT) agreements of the WTO adopted by the members in 1995 after the Uruguay round were intended to ensure quality, safety and labeling in international trade of seafood. Development of Hazard Analysis and Critical Control Points (HACCP) by the US imposed significant costs especially to suppliers from developing nations. Similarly, eco-labeling though voluntary, can also add to the cost. SPS even though imparted transparency in the process indirectly gave status and legal force to the Codex Alimentarius Commissions food code of WHO and FAO created in 1963. Standard equivalence between the countries promoting trade and notifying the changes in standards can be pointed out as the most significant outcomes of the adoption of SPS. EU has been the champion in development of food safety standards. Through legislation they have covered all aspects under the concept of farm-to-fork which has a strong influence on all the developing economies exporting to EU. In US Federal Regulations, often referred to as 21 CFR 123 (see US FDA Centre for Food Safety and Applied Nutrition, web site www.cfsan.fda.gov*).*These regulations apply to domestically produced products and imports. While new regulations with regard to quality control, such as HACCP, have been adopted by all major importing countries and made compulsory for their fish processing industries, one notable exception is Japan. While some firms in Japan have neither HACCP nor external suppliers. Standards for imports of fish and fishery products into Japan are governed by the legislation set out in the Food Sanitation Law and the Quarantine.

Subsidies

Subsidies fall under the Agreement on Subsidies and Countervailing Measures (ASCM). Fisheries is a subject under Non-Agricultural Market Access (NAMA). The WTO's definition of subsidies in the Agreement on SCM include: Specific financial transfers from state to the industry; The state foregoing normally collectable revenue (*e.g.* tax free fuel) ; Provision of services or investments to industry; State purchases of industry outputs other than on commercial terms and also includes all form of state income or price support. Subsidies can also be categorized in relation to the rights of members to make complaint and take action (countervailing measures) and can be prohibited. Export enhancing subsidies or subsidies giving preference to domestic producers or grants tied to the use of domestically produced goods are actionable. That is, a subsidy may be challenged on the

basis of causing 'adverse effects' to the interests of other WTO members. At Doha (2001) WTO Ministerial Conference there was there was a call to eliminate fisheries subsidies which are likely to increase fishing capacity. Transparency regarding subsidies is an issue: few members of the WTO have complied with their obligation to report subsidies. The political sensitivity of the subsidies issue is highlighted by the use of less offensive synonyms for subsidy: *e.g.* `government financial transfers' and 'economic incentives'. There are also large inconsistencies in the data that is publicly available. Subsidies are reported to lead to overcapacity in the fishing industry leading to overfishing.

Inappropriate subsidies have a threatening effect on fisheries. According to the World Bank (2004), formal access of foreign vessels to fishing grounds within the EEZ of fish-rich countries is usually regulated under fishing agreements and many fishing agreements are heavily subsidized by industrial countries (e.g. the EU pays 83 per cent of the license fee, the vessels themselves only 17 per cent). The type of subsidy most frequently found in developing countries is in form of bilateral or multilateral development projects. However, there are some fishing subsidies in developing countries, for example: port facilities owned and managed by the public sector; subsidized lending and credit provision – in some cases in order to adopt new technology; sales tax exemptions for inputs used by the fishing industry; subsidized fishing inputs in the form of import tax exemptions.

Quality - an Indian perspective

SPS related issues always had problems as far as marine products are concerned and in 1977 there was a strict ban on Indian seafood due to quality and hygiene issues (Jha, 2005) Though the ban was lifted subsequently this has resulted in the extensive development of infrastrcuture like potable water system and effluent treatment plant, flake ice machines, chill rooms, standby generators, laboratory etc. costing over $25 million towards upgradation (Kaushik and Shahib, 2001).

Since 2000, the issue has been revolving around the use of antibiotics and bacterial inhibitors in shrimps. In the beginning India did not have the infrastructure to detect at ppb level of the chemicals but later on developed analytical system with Liquid chromatographic systems equipped with Mass Spectrometer to detect the banned chemicals in use in aquaculture or otherwise. As there are over 250 chemicals in use and checking for all these chemicals for a particular product has always been a problem faced by the industry.

The problems of export rejections still continue in exports related to EU and now it is related in most cases to antibiotic residues, bacterial inhibitors and hygiene issues, though there are strict regulation prevail in India as far as marine products are concerned. The export in the present scenario is possible only if the processing unit is pre-approved by the EU and only if the consignments is certified by Export Inspection Council, which is the authorized agency for a number of food products.

Cases beyond TBT

Ethoxyquin in tiger shrimp

There was a sudden move by the Japanese Food and Safety Authority to impose compulsory testing for Ethoxyquin in shrimp consignments from India on the basis of a default standard of 0.01 ppm. There are no international norms for Minimum Residue Limits (MRLs) fixed for Ethoxyquin in shrimp. Scientific evidence was insufficient to show it was not safe for human health. The Chairperson of MPEDA pointed out that the overnight notice to India regarding the decision and the fact that the default standard fixed was not

based on any scientific studies on safety evaluation, nationally or internationally. The Govt. of India delegation lead by the Chairperson MPEDA urged the Minister of Labour and Health, Japan to keep the default standard in abeyance for the time being, because shipments hit are mainly from Odisha and West Bengal which will affect the livelihoods of poor aquafarmers. The same threat is perceived by Andhra Pradesh farmers also being the major shrimp exporting state.

Ethoxyquin is an antioxidant which finds its way into shrimp through the feed which contains fish oils which need to be protected from oxidation. Otherwise, rancidity may affect feeds which will deplete its nutritional quality. Antioxidants and antifungals are used to enhance the shelf life of food and feed products.

Semicarbazide in scampi

Some of the challenges in residue testing are beyond technical barriers. For instance, Interfield Laboratories, Cochin, conducted a series of studies to understand why fresh water scampi (*Macrobrachium rosenbergii*) from natural sources and found not to contain the antibiotic nitrofuran marker semicarbazide (SEM) were rejected from the European Union, particularly in Belgium in 2008-09. They found that the shells of scampi contained SEM and that if the sample is processed with shell (as in Belgium), you get the marker, although it is not an indication of antibiotics abuse. On the other hand, if only the edible part, meat, is used for analysis, as in Germany and several other EU countries and also in the laboratories in India, no SEM is detected. The EU authorities assigned a project to the University of Ghent, Belgium, to verify these conclusions of India in an independent study and the results published in 2011 vindicated India's stand.

Capability development

One of the positive outcomes in food sector in general and fisheries sector in particular in the underdeveloped countries and developing countries subsequent to becoming signatories of WTO is the development of food analytical certification mechanisms and facilities. Investment from the private sector was another encouraging aspect. Understanding this WTO itself was proactive and initiated a self-supporting mechanism called The Standards and Trade Development Facility (STDF).

Standards and Trade Development Facility

The Standards and Trade Development Facility (STDF) is a global partnership that supports developing countries in building their capacity to implement international sanitary and phytosanitary (SPS) standards, guidelines and recommendations as a means to improve their human, animal and plant health status http://www.wto.org/index.htms and ability to gain or maintain access to markets.

The STDF is a joint initiative of the Food and Agriculture Organization (FAO), the World Organization for Animal Health (OIE), the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO). The WTO provides the secretariat for the STDF. Other participating organizations include the International Trade Centre (ITC), the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Industrial Development Organization (UNIDO). Donors contributing funds to the STDF and representatives of developing countries, including LDCs, are also members of the facility (More detailed information on the STDF and its activities can be found on the STDF website http://www.standardsfacility.org)

STDF vision is - improved sanitary and phytosanitary capacity in developing countries supports sustainable economic growth, poverty reduction, food security and environmental protection. STDF mission - is a global partnership that supports developing countries in building their capacity to implement international sanitary and phyto sanitary standards, guidelines and recommendations as a means to improve their human, animal and plant health status and ability to gain and maintain access to markets. STDF's mandate is to increase awareness, mobilize resources, strengthen collaboration, identify and disseminate good practice; and provide support and funding for the development and implementation of projects that promote compliance with international SPS requirements. The STDF is committed to the Paris Principles on Aid Effectiveness and to achieving the Millennium Development Goals.

Conclusion

Quality in fisheries is paramount especially in the export market. Fishery products with certifications and traceability are already available in the world market. Quality not only added safety but also value to the products. Issues of safe limits of micronutrients, pollutants, antimicrobials, pesticides do surface and mechanisms to address these problems also evolve leading to a world trade which is balanced.

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